

## REMARKS

An Office Action was mailed in the above-captioned application on January 11, 2005. In such Office Action claims 1-30 were pending. Claims 7-12 and 20-30 were withdrawn from consideration. Claims 1-6 and 13-19 were rejected. This Amendment and Remarks document is submitted in response to said Office Action.

Claims 2, 7-12, 14, and 20-30 have been cancelled. Claims 1 and 13 have been amended. Claims 3 and 15 have been amended to correct dependency.

### Informalities

The Examiner has objected to the specification as having two of page 9. By the foregoing amendment, the first instance of page 9 has been deleted.

### The Rejection under 35 U.S.C. § 112, first paragraph

The Examiner has rejected claims 1-6 and 13-19 have been rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. Specifically, the rejection indicates that the term "an allosteric effector compound capable of decreasing hemoglobin binding affinity for oxygen" is not described in a reasonably generic means to show that applicant envisioned all compounds that may have this activity at the time of filing.

The rejection indicates that the dependent claims fall therewith, but that the rejection can be obviated by incorporating the limitations of claim 2 into claim 1, and the limitations of claim 14 into claim 13. This amendment has been made and it is believed that the amendment overcomes the rejection. Reconsideration is respectfully requested. Applicant reserves the right to pursue the cancelled subject matter in a continuing application.

### The Rejection under 35 U.S.C. § 112, second paragraph

The Examiner has rejected Claims 1-6 and 13-19 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The second paragraph of Section 112 requires that the claims set out and circumscribe a particular area which applicants regard as their invention with a *reasonable* degree of precision and particularity.

Specifically, the rejection indicates that the recitation of “an allosteric effector compound capable of decreasing hemoglobin binding affinity for oxygen” is indefinite because it is unclear what all compounds are encompassed or excluded thereby.

The rejection indicates that the dependent claims fall therewith, but that the rejection can be obviated by incorporating the limitations of claim 2 into claim 1, and the limitations of claim 14 into claim 13. This amendment has been made and it is believed that the amendment overcomes the rejection. Reconsideration is respectfully requested. Applicant reserves the right to pursue the cancelled subject matter in a continuing application.

#### The Rejection under 35 U.S.C. § 102(b)

The Examiner has rejected Claims 1 and 13 under 35 U.S.C. § 102(b) as being anticipated by Leunbach, U.S. Patent No. 5,765,562. The Court of Appeals for the Federal Circuit has stated that anticipation requires the presence in a single prior art reference of each and every element of the claimed invention. *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458 (Fed. Cir. 1984); *Alco Standard Corp. v. Tennessee Valley Auth.*, 1 U.S.P.Q.2d 1337, 1341 (Fed. Cir. 1986). "There must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention." *Scripps Clinic v. Genentech Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991) (citations omitted).

Specifically, the rejection indicates that Leunbach discloses a method of measuring blood oxygen level dependent MRI by administration of a free radical compound and performing a blood oxygen level dependent MRI to determine the oxygenation level. Applicant disagrees with the rejection's assertion that “the free radical compounds . . . would inherently be expected to be ‘capable of’ decreasing hemoglobin binding affinity for oxygen as claimed . . .”; however, in the interest of expediting prosecution, claim 1 has been amended to incorporate the limitations of claim 2 into claim 1, and claim 13 has been amended to incorporate the limitations of claim 14 into claim 13. Applicant reserves the right to pursue the cancelled subject matter in a continuing application. It is believed that the amendment overcomes the rejection. Reconsideration is respectfully requested.

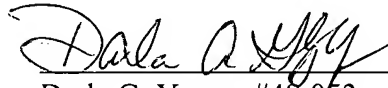
Closing Remarks

Applicant believes that the pending claims are in condition for allowance. If it would be helpful to obtain favorable consideration of this case, the Examiner is encouraged to call and discuss this case with the undersigned.

This constitutes a request for any needed extension of time and an authorization to charge all fees therefore to deposit account No. 19-5117, if not otherwise specifically requested. The undersigned hereby authorizes the charge of any fees created by the filing of this document or any deficiency of fees submitted herewith to be charged to deposit account No. 19-5117.

Respectfully submitted,

Date: May 11, 2005



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